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September 12, 1985

HAND-DELIVERED

SEP 12 1985 - 1 05 PM
INTERSTATE COMMERCE COMMISSION

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Mr. James H. Bayne
Office of the Secretary
Recordation Office
Interstate Commerce Commission
12th Street and Constitution
Avenue, N.W.
Washington, D.C. 20423

No. 5-258A090
Date SEP 12 1985
Fee \$ 10.00
ICC Washington, D.C.

SEP 12 1 00 PM '85
HOTOR OPERATING UNIT
ICC OFFICE OF
THE SECRETARY

Re: First Interstate Leasing, Inc.; Alaska
Railroad Corporation; and Citicorp Industrial
Credit, Inc.; Recordation File No. 14786

Dear Mr. Bayne:

In accordance with the provisions of § 11303 of the Revised Interstate Commerce Act, 49 U.S.C. § 11303, and Part 1177 of Title 49 of the Code of Federal Regulations, we request, as special counsel for First Interstate Leasing, Inc., that the enclosed document be recorded and filed with the Interstate Commerce Commission.

You will find enclosed herewith the original and (3) copies of the following document:

Escrow Agreement made and entered into as of August 1, 1985, by and among First Interstate Bank of California, a national banking association, as Escrow Agent, First Interstate Leasing, Inc., as Lessor, and Alaska Railroad Corporation, as Lessee.

The Escrow Agreement is intended, among other things, to create an escrow fund into which Lessor is required to deposit or

Mr. James H. Bayne
September 12, 1985
Page Two

cause to be deposited certain funds, all of which is more fully described in the Escrow Agreement itself.

The parties executing this Escrow Agreement are:

First Interstate Leasing, Inc.
245 South Los Robles Avenue
Pasadena, California 91109

Alaska Railroad Corporation
P.O. Box 103515
Anchorage, Alaska 99510-3515

First Interstate Bank of California
New Port Beach Trust Office
P.O. Box 1830
5000 Birch Street
2nd Floor
New Port Beach, California 92660-2115

You will also find enclosed herewith a check made payable to the Interstate Commerce Commission in the amount of Ten Dollars (\$10.00), which sum is intended as full and final payment for the filing fees to be incurred in connection herewith.

This document should be stamped and filed as Recordation No. 14786-C.

Would you please stamp, as noted above, the enclosed original and copies and return the enclosed original and two (2) copies, as stamped, to our office at your earliest possible convenience?

Thank you for your assistance in this matter.

Sincerely yours,

JACKSON & CAMPBELL, P.C.

By: David H. Cox
David H. Cox

DHC/lg

Enclosures As Stated

SEP 12 1985 - 1 25 PM

ESCROW AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, made and entered into as of August 1, 1985, by and among First Interstate Bank of California, a national banking association (the Escrow Agent), First Interstate Leasing, Inc. (Lessor), a corporation duly organized and existing under the laws of the State of California, and Alaska Railroad Corporation (Lessee), an Alaska public corporation;

WITNESSETH THAT, in the joint and mutual exercise of their powers, and in consideration of the mutual covenants herein contained, the parties hereto recite and agree as follows:

Section 1. Recitals.

1.01. Lessor and Lessee have entered into an Lease Agreement dated of even date herewith (the Lease), a duplicate original of which has been furnished to the Escrow Agent, whereby Lessor has agreed to provide moneys for the acquisition of certain equipment described in Exhibit A to the Lease (the Equipment), and to lease the Equipment to Lessee, and Lessee has agreed to lease the Equipment from Lessor; all in the manner and on the terms set forth in the Lease.

1.02. This Agreement is not intended to alter or change in any way the rights and obligations of Lessor and Lessee under the Lease, but is entirely supplemental thereto.

1.03. The terms capitalized in this Agreement but not defined herein shall have the meanings given to them in the Lease.

1.04. Pursuant to the Lease, within 10 days after the execution of the Lease and this Agreement, Lessor is required to deposit or cause to be deposited with the Escrow Agent a sum not less than \$1,247,130.00 which is required to be deposited in the Equipment Acquisition Fund established in Section 2 hereof and used to pay the Equipment cost; and Lessor is required to deposit or cause to be deposited with the Escrow Agent a sum not less than \$220,000.00 which is to be deposited in the Reserve Fund established in Section 3 hereof and held to secure timely payment of the Lease Payments under the Lease.

1.05. The Equipment cost is presently estimated to comprise the following items in the following amounts:

15 Articulated 70 ton intermodal flat cars @ \$83,142.00 each

Total:

\$ 1,247,130.00

1.06. Subject to such control by the MANAGER,
FINANCIAL SERVICES of Lessee (the Lessee Representative) as is provided for herein, Lessor and Lessee agree to employ the Escrow Agent to receive, hold, invest and disburse the moneys to be paid to the Escrow Agent by Lessor as described in

Section 1.04; and to perform certain other functions; all as hereinafter provided.

1.07. The Escrow Agent shall not be obligated to assume or perform any obligation of Lessor or Lessee under the Lease by reason of anything contained in this Agreement.

1.08. Each of the parties has authority to enter into this Agreement, and has taken all actions necessary to authorize its execution by the officers signing it.

Section 2. Equipment Acquisition Fund.

2.01. The Escrow Agent shall establish a special escrow fund designated as the "Equipment Acquisition Fund" (the Equipment Acquisition Fund); shall keep such Fund separate and apart from all other funds and moneys held by it; and shall administer such Fund as provided in this Section and Section 5 hereof.

2.02. There shall be credited to the Equipment Acquisition Fund \$1,247,130.00 of the moneys paid to the Escrow Agent by Lessor pursuant to the Lease, and any other moneys received by the Escrow Agent for deposit in the Fund. Subject to the provisions of Sections 2.03 and 2.05, the Escrow Agent shall use the moneys in the Equipment Acquisition Fund to pay the cost of the Equipment. The cost of any portion of the Equipment due under an acquisition contract shall be paid upon receipt of a Payment Request Form approved by Lessor attached hereto as Exhibit A completed and executed by the Lessee

Representative with the following attachments: (1) the Contractor's invoice; (2) a Certificate of Acceptance in the form attached as Exhibit D to the Lease; (3) if applicable, a Bill of Sale duly executed by the Contractor vesting legal title thereto in ^{Lessor} ~~XXXXXX~~ and (4) if applicable, lien waivers duly executed by the Contractor; provided that attachments (3) and (4) shall be required only to support a request for final payment under an acquisition contract. Equipment cost comprising financing expenses shall be paid upon receipt of such Payment Request Form and an invoice from the person, firm or corporation requesting payment. Such cost shall be paid directly to the person or entity entitled to payment; provided that if written evidence is presented to the Escrow Agent of prior payment of such cost and the amount thereof, then payment may be paid to Lessee or other person, firm or corporation entitled to reimbursement therefor.



2.03. The Escrow Agent shall be responsible for the safekeeping and investment of the moneys held in the Equipment Acquisition Fund, and the payment thereof in accordance with this Section; and shall not be responsible for the authenticity and accuracy of such certifications or documents, the application of amounts paid pursuant to such certifications by the persons or entities to which they are paid, or the sufficiency of the moneys credited to the Equipment Acquisition Fund to make all of the payments herein required.

2.04. Upon completion and payment of the Equipment cost, but not later than August 1, 1988, the Escrow Agent shall transfer to the Reserve Fund created in Section 3 such amount of the unencumbered moneys remaining on hand in the Equipment Acquisition Fund, if any, as is necessary to bring the balance on hand in the Reserve Fund to \$220,000.00 and shall then transfer any remaining balance thereof to Lessee to be used for the payment of the next Lease Payments coming due in accordance with the Lease.

2.05. In any event the Escrow Agent shall make no payment from the Equipment Acquisition Fund for any Equipment cost or portion thereof if the Escrow Agent has received notice from Lessor that Lessee is currently in default with respect to the payment of any Lease Payment then due and currently owing under the Lease.

Section 3. Reserve Fund.

3.01. The Escrow Agent shall establish a special escrow fund designated as the "Reserve Fund" (the Reserve Fund); shall keep such Fund separate and apart from all other funds and moneys held by it; and shall administer such Fund as provided in this Section and Section 5 hereof.

3.02. There shall be deposited in the Reserve Fund \$ 220,000.00 of the moneys required to be paid to the Escrow Agent by Lessor pursuant to the Lease, any moneys required to be deposited therein as provided in Section 2, and any other

moneys received by the Escrow Agent for deposit. Moneys deposited in the Reserve Fund and any interest earned thereon shall be held in trust as a reserve for the payment when due of all Lease Payments to be paid by Lessee pursuant to the Lease, and shall be used and applied only as hereinafter provided.

3.03. On the last day of each month the Escrow Agent shall transfer any moneys in excess of \$ 220,000.00 then on hand in the Reserve Fund to Lessee, and Lessee shall use such moneys to pay the Lease Payment then due. For purposes of determining the amount on hand in the Fund securities held therein shall be valued at their face amount. ~~if xxx in default xxx or at their market value if in default xxx~~



3.04. If the Escrow Agent receives written notice from Lessor of the occurrence of an Event of Default as described in Section 12.1, Clause (i) of the Lease, the Escrow Agent shall use the moneys on hand in the Reserve Fund to make the defaulted Lease Payment on behalf of Lessee by paying the amount necessary for this purpose to Lessor; provided that if on any payment date the amount of all Lease Payments due and payable exceeds the amount on hand in the Reserve Fund, the moneys on hand therein shall be applied first to the payment of Interest due. Upon receipt by Lessor of any delinquent Lease Payment with respect to which moneys have been advanced from the Reserve Fund, such Lease Payment shall be deposited with the Escrow Agent by Lessor and credited to the Reserve Fund,

and Lessee shall also be obligated to pay any other amount necessary to bring the balance in the Reserve Fund to \$ 220,000.00.

3.05. Upon the Escrow Agent's receipt of notice that Lessee has exercised its option to prepay its Lease Payment obligation with respect to the Equipment in accordance with Article X of the Lease, the moneys on hand in the Reserve Fund shall be transferred to Lessee. Upon the Escrow Agent's receipt of notice that Lessor has received the final Lease Payment with respect to the Equipment as shown on Lease Exhibit B, the moneys on hand in the Reserve Fund shall be transferred to Lessee.

Section 4. Insurance and Condemnation Award Fund.

4.01. Upon receipt of any Net Proceeds of any insurance claim or condemnation award paid to the Escrow Agent in accordance with Article VI of the Lease, the Escrow Agent shall establish a special escrow fund designated as the "Insurance and Condemnation Award Fund" (the Insurance and Condemnation Award Fund); shall credit said Net Proceeds to such Fund; shall keep such Fund separate and apart from all other funds and moneys held by it; and shall administer such Fund as provided in this Section and Section 5 hereof.

4.02. Moneys credited to any such Fund shall be used and paid in accordance with Article VI of the Lease, and until so used shall be held and invested in the manner provided in Section 5 of this Agreement.

Section 5. Moneys in Funds; Investment.

5.01. The moneys and investments held by the Escrow Agent under this Agreement are irrevocably held for the benefit of Lessee and Lessor, and for the purposes herein specified, and such moneys, together with any income or interest earned thereon, shall be expended only as provided in this Agreement, and shall not be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee.

5.02. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent only in Qualified Investments, as directed in writing by Lessee. Such investments shall be registered in the name of the Escrow Agent or a nominee thereof or held in a depository. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available. Any gain or loss resulting from such investment shall be attributed to the fund to which such investment relates.

5.03. "Qualified Investments" include only those investments authorized by the laws of the State of Alaska for purchase by Lessee.

5.04. Upon written notice as provided for hereunder, the Escrow Agent shall without further direction from Lessee or the Lessee Representative sell such investments as and when required to make any payment from the fund for which such investments are held. Any income received on such investments

shall be credited to the respective fund for which it is held, subject to any provision of this Escrow Agreement specifying any different credit or the transfer thereof to another fund.

5.05. The Escrow Agent shall furnish to Lessor and Lessee an accounting of all investments. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Section.

Section 6. Escrow Agent's Compensation.

6.01. Lessee hereby agrees to pay the Escrow Agent reasonable compensation for the services to be rendered hereunder, which compensation has been agreed to by Lessee and the Escrow Agent. Except as otherwise provided herein, Lessee will pay and/or reimburse the Escrow Agent upon request for all out-of-pocket expenses, disbursements, and advances, including reasonable attorneys' fees, incurred or made by it in connection with carrying out its duties hereunder.

Notwithstanding anything herein to the contrary, the Escrow Agent may deduct or obtain from moneys otherwise immediately payable to Lessee hereunder, amounts due for the Escrow Agent's expenses and fees to the extent that same remain unpaid at the time of such disbursement.

6.02. In the event that the Escrow Agent or any successor Escrow Agent shall be substituted or resign pursuant to the terms hereof, the unearned portion of any fees paid to

such Escrow Agent by Lessor shall be paid to the successor Escrow Agent in immediately available funds on and as of the effective date of such substitution or resignation; provided however that such proration of fees shall not occur during the first twelve months that this account is in existence. In calculating the unearned portion of any such fees paid in advance, the amount thereof shall be spread over the full period in respect of which such fees were paid on a per diem basis. At any time after the initial twelve-month period, a termination fee of \$250 shall be charged.

Section 7. Change of Escrow Agent.

7.01. Any national banking association or state bank organized under the laws of any state of the United States may be substituted to act as Escrow Agent under this Agreement, upon agreement of the parties hereto, ~~or upon written request~~ ^{lessee} ~~of Lessor~~. Such substitution shall not be deemed to affect the rights or obligations of Lessor. Upon any such substitution, the Escrow Agent agrees to assign to such substitute Escrow Agent its rights under this Agreement.

7.02. The Escrow Agent or any successor may at any time resign by giving mailed notice to Lessor and Lessee of its intention to resign and of the proposed date of resignation, which shall be a date not less than 60 days after such notice is deposited in the United States mail with postage fully prepaid, unless an earlier resignation date and the appointment

of a successor Escrow Agent shall have been or are approved by Lessor.

7.03. Upon approval by Lessor, the Escrow Agent may appoint an agent to exercise any of the powers, rights or remedies granted to the Escrow Agent under this Agreement, and to hold title to property or to take any other action which may be desirable or necessary.

Section 8. Assignment.

Except as otherwise provided in this Agreement, the rights and duties of each of the parties under this Agreement shall not be assignable to any person or entity without the written consent of all of the other parties.

Section 9. Amendments.

The provisions of this Agreement may be amended in writing by agreement among all of the parties.

Section 10. Limitation of Liability.

10.01. The Escrow Agent shall have no obligation or responsibility for providing information concerning the investment character of the Lease, for the sufficiency or collection of any Lease Payments or other moneys required to be paid under the Lease, or for the actions or representations of any other party to this Agreement. The Escrow Agent shall have no obligation or liability to any of the other parties with respect to this Agreement or the failure or refusal of any other party to perform any covenant or agreement made by any of

them under this Agreement or the Lease, but shall be responsible solely for the performance of the duties expressly imposed upon it hereunder, in a business-like and prudent banking fashion. The Escrow Agent shall not be responsible for the recording or re-recording, filing or re-filing of the Escrow Agreement or the Lease, or any supplement or amendment thereto, or the filing of any financing statements (or continuation statements in connection therewith) or of any supplemental instruments or documents of further assurance, or for the sufficiency of the security for the Lease, or the value of or title to the Equipment. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it under the terms of and in accordance with this Agreement.

10.02. Lessee agrees to indemnify and save the Escrow Agent and Lessor harmless from and against all claims, suits and actions brought against either of them, or to which either of them is made a party, and from all losses and damages suffered by either of them as a result thereof, where and to the extent such claim, suit or action arises out of the actions of Lessee or its employees or agents, including but not limited to the ownership, operation or use of the Equipment by Lessee. Such indemnification shall not extend to claims, suits and actions brought against the Escrow Agent or Lessor for failure to perform and carry out the duties specifically imposed upon

and to be performed by either of them pursuant to this Agreement. In the event Lessee is required to indemnify the Escrow Agent or Lessor as herein provided, Lessee shall be subrogated to the rights of the party indemnified to recover such losses or damages from any other person or entity.

Section 11. Administrative Provisions.

11.01. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Agreement, which shall be available for inspection by Lessee and Lessor, or the agent of either of them, at any time during regular business hours.

11.02. All written notices to be given under this Agreement shall be given by ^{registered} ~~xxxxxxx~~ mail to the party entitled thereto at its address set forth in the attached Exhibit B, or at such address as the party may provide to the other party in writing from time to time. Any such notice shall be deemed to have been received 48 hours after deposit in the United States mail in registered form, with postage fully prepaid.



11.03. This Agreement shall be construed and governed in accordance with the laws of the State in which the Escrow Agent is incorporated or maintains its principal place of business.

11.04. Any provision of this Agreement found to be prohibited by law shall be ineffective only to the extent of

such prohibition, and shall not invalidate the remainder of this Agreement.

11.05. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

11.06. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

FIRST INTERSTATE BANK OF
CALIFORNIA,
Escrow Agent

(SEAL)

By

Its

And

Its

FIRST INTERSTATE LEASING, INC.

By

Its

ALASKA RAILROAD CORPORATION

By

Its

EXHIBIT A

Payment Request Form

First Interstate Bank of California (the Bank), Escrow Agent under an Escrow Agreement dated as of August 1, 1985, among the Bank, Alaska Railroad Corporation (Lessee), and First Interstate Leasing, Inc. (Lessor), is hereby requested to pay from the Equipment Acquisition Fund held under said Escrow Agreement, to the person, firm or corporation designated below as Payee, the sum set forth below such designation, in payment of the cost of the Equipment or portion thereof delivered and/or provided pursuant to the Lease Agreement dated as of August 1, 1985, between Lessor and Lessee. The undersigned hereby certifies that the amount requested for payment is for payment or reimbursement for the cost of said Equipment or portion thereof, has not formed the basis of a previous request for payment, is now due and owing, and has been approved by Lessee for payment. The undersigned further certifies that such payment shall constitute payment in full for such Equipment or portion thereof, and that the invoice of the Contractor therefor, a Certificate of Acceptance thereof, a Bill of Sale thereof and a lien waiver relating thereto, all as or if required by Section 2.02 of the Escrow Agreement, are attached hereto.

In the event that the Payee named on this Payment Request Form is Lessee or another person, firm or corporation to which reimbursement is due for payment previously paid by Lessee or such other person, firm or corporation to the Contractor for such Equipment or portion thereof, written evidence of such prior payment and the amount thereof is also attached to this Payment Request Form.

Payee: _____
Amount: _____
Equipment: _____

Dated _____, 198_.

ALASKA RAILROAD CORPORATION

By _____
Its _____

EXHIBIT B

Addresses of Parties

1. Lessor: First Interstate Leasing, Inc.
245 South Los Robles Avenue
Pasadena, California 91109
2. Lessee: Alaska Railroad Corporation
P. O. Box 103515
Anchorage, Alaska 99510-3515
3. The Escrow Agent: First Interstate Bank of California
~~707 Wishire Boulevard~~
~~Los Angeles, California~~

FIRST INTERSTATE BANK
NEWPORT BEACH TRUST OFFICE
P.O. BOX 1830
5000 BIRCH STREET
2nd FLOOR
NEWPORT BEACH, CA
92660-2115